

Honolulu, Hawaii

FEB 13 2017

RE: S.B. No. 422

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 422 entitled:

"A BILL FOR AN ACT RELATING TO CHILD VISITATION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Delete language awarding grandparents reasonable visitation rights from section 571-46, Hawaii Revised Statutes, relating to the criteria and procedure in awarding custody and visitation; and
- (2) Add language to section 571-46.3, Hawaii Revised Statutes, regarding grandparents' visitation rights, that:
 - (A) Requires the courts to make a finding that awarding grandparent visitation is in the best interest of the child and denial of grandparent visitation would cause actual or potential harm to the child;
 - (B) Establishes a rebuttable presumption that a parent's decision regarding visitation is in the best interest of the child, which may be rebutted by a preponderance of the evidence that denial of reasonable grandparent visitation rights would cause actual or potential harm to the child;



- (C) Clarifies the court shall be guided by all standards, considerations, and procedures for parent visitation under section 571-46, Hawaii Revised Statutes; and
- (D) Clarifies if a grandparent or grandparents of a child violate the terms and conditions of an order awarding reasonable visitation rights, the grandparent or grandparents shall be subject to sanctions or contempt of court.

Your Committee received testimony in support of this measure from one individual. Your Committee received testimony in opposition to this measure from the Family Law Section of the Hawaii State Bar Association. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that grandparents are taking on increasing responsibilities in helping to raise their grandchildren, especially when the children's own parents are unable or unwilling to do so as a result of a lack of financial self-sufficiency, abandonment, mental disorder, minor status, substance abuse, or incarceration. Grandparents may help foster a child's healthy emotional and psychological development, further a child's education, and positively influence a child's well-being. This measure recognizes the benefits and importance of having grandparents be a part of a child's life by allowing the family court to award reasonable visitation rights to a grandparent if reasonable visitation is in the best interest of the child and denial of visitation could cause actual or potential harm to the child.

Your Committee notes the comments submitted in written testimony by the Department of the Attorney General that the court in *Doe v. Doe*, 116 Hawaii 323 (2007) held that the standard to be used in awarding grandparent visitation is a showing that a denial of grandparent visitation would cause significant, rather than actual or potential, harm to the child.

Accordingly, your Committee has amended this measure by:

- (1) Deleting section 2, thereby reinstating language awarding grandparents reasonable visitation rights under section 571-46, Hawaii Revised Statutes, relating to the



criteria and procedure in awarding custody and visitation;

- (2) Adopting the language suggested by the Department of the Attorney General that clarifies that the denial of grandparent visitation would cause significant, rather than actual or potential, harm to the child;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 422, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 422, S.D. 1, and be referred to your Committee on Ways and Means.


Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 422	Committee Referral: JDL, WAM	Date: 2/1/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	5	0	0	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes